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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 65.

MARTHA I. HUNT, PLAINTIFF IN ERROR,

vs.

THE SPRINGFIELD FIRE AND MARINE INSURANCE COMPANY.

PLAINTIFF IN ERROR'S BRIEF IN REPLY TO MOTION TO DISMISS.

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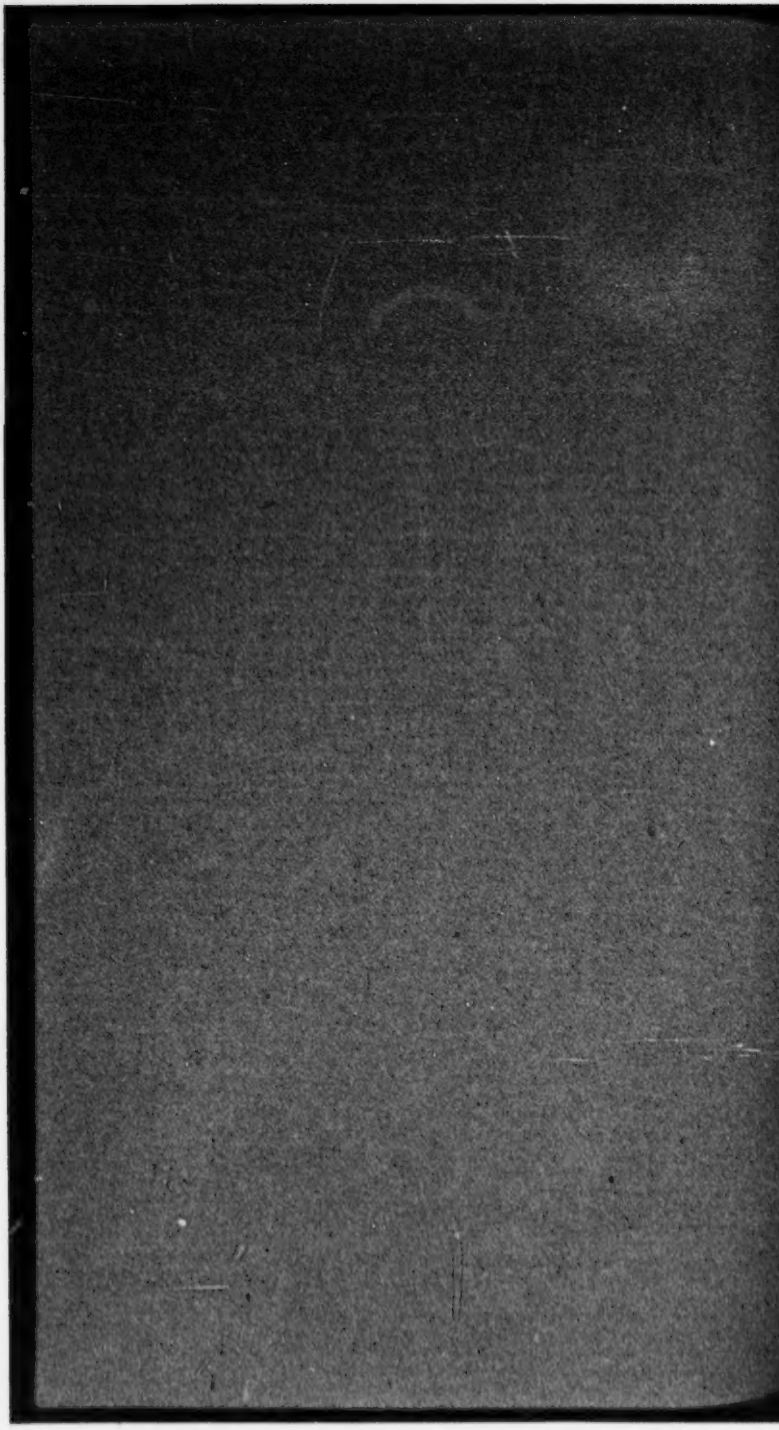

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Plaintiff in Error's Brief in Reply to Motion to Dismiss.

The motion to dismiss on the ground that the matter in dispute does not exceed the sum of $5,000 can hardly be sustained, when an examination of the declaration shows that plaintiff at the time that the suit was filed was entitled to recover the sum of $5,012.50. It is admitted on behalf of the defendant in error that the policy of insurance mentioned in the declaration is a standard policy, and the declaration shows the policy as being due sixty days after the proof of loss, and the $12.50 is claimed as interest accrued from the expiration of the period of sixty days to the date of suit. The rate of interest, as prescribed by section 713 of

the Revised Statutes of the District of Columbia, which was in force at the time of the occurring of the loss alleged in the declaration for the forbearance of any money, goods, or things in action, was 6 per cent. and there accrued, the policy being due two months after the proof of loss, to the plaintiff in this case the sum of $12.50 before the suit was brought; therefore the amount involved is more than $5,000.

The authorities cited by defendant in error in no way affect this contention. In the cases where the suit was dismissed for want of jurisdiction, although the *ad damnum* clause claimed the jurisdictional amount, it was apparent on the face of the record that no such amount could be recovered, and this court said, and rightly said, that a party cannot by his *ad damnum* clause give this court jurisdiction where on the face of the record it appears that it has no such jurisdiction.

The case at bar is entirely different. Here the declaration on its face shows a jurisdictional amount, and shows conclusively that if plaintiff had recovered in this case that the accrued interest would have been necessarily a part of the verdict, for according to law interest would run on this policy of insurance sixty days after the proof of loss, and that interest would be part of the claim litigated, and not given merely by way of damages for the non-payment of the policy of insurance.

In the case of Webster *vs.* The Buffalo Insurance Co., 110 U. S., 386, cited by defendant in error, the court, speaking of the policy in that case, referred to the fact that if the plaintiffs had recovered according to their claim as stated in the pleadings, their judgment, *after interest added*, would have been less than $5,000. In the case here at bar there can be no dispute but that, if we add to the face value of the policy the interest, it exceeds the amount of $5,000.

An examination of the decisions of this court will show that not only has this court held it has jurisdiction where interest has been claimed, but even in cases where interest

was not a part of the verdict, but still given by law to the judgment, this court has sustained its jurisdiction.

Mass. Beneficial Asso. *vs.* Miles, 137 U. S., 680.
Washer *vs.* Bullitt Co., 110 U. S., 558–562.
District of Columbia *vs.* Gannon, 130 U. S., 227.
Guthrie Nat. Bank *vs.* Guthrie, 173 U. S., 533.
Woodward *vs.* Jewell, 140 U. S., 247.

FURTHER ARGUMENT ON MERITS.

The attempt on the part of the defendant in error to construe the instrument mentioned in the pleas as a chattel mortgage on account of the demurrer filed thereto is not well taken, for wherever the term "chattel mortgage" is used in the pleas it is afterwards explained and the instrument is described as a deed in trust or deed of trust. Plea five refers to plea four for the instruments, and in plea four the instruments are fully described under the subheads A, B, and C, and each subhead shows therein described a deed of trust and not a chattel mortgage. In plea six, although the instrument is spoken of as a chattel mortgage, it is described in the latter part of the plea, and reference is made thereto, after stating date and where recorded, as follows:

"Said deed being in trust to secure the payment to D. R. McNaught for the sum of $420 with interest, the property covered by said *deed of trust* being more particularly described" etc.

So that it can hardly be contended that the instruments referred to in these two pleas are not what are known in law as chattel deeds of trust. Any other contention would beg the question involved in this case, and this court has here the simple question of whether or not, under the conditions of the policy mentioned in the declaration, there was a forfeiture by reason of the fact that the assured placed on said property certain chattel deeds of trust.

The Dumas case, 12 App. D. C., 245, referred to by defendant in error, has no application to the case at bar. No contention was raised therein as to the distinction between chattel deeds of trust and chattel mortgages, but there was involved in that case the question of sole ownership, as well as the question of fraud and misrepresentation on the part of the assured.

The only authority to uphold the contention of the defendant in error is the very decision that we seek here to reverse, and this decision is certainly contrary to all authority.

The question involved is one of substantive law, and the Maryland authorities cited by plaintiff clearly show that there is a distinction in substance as well as form between a deed of trust and a mortgage. While it is admitted by both parties there is no ambiguity in this condition, still the defendant in error would have this court construe the condition to include instruments that are not named therein. They would further have this court give to this condition, which works a forfeiture, a liberal, or what we might call equitable, construction when this court has decided again and again that conditions or clauses in insurance policies that work forfeitures should be strictly construed.

In the case of Hosford *vs.* The Hartford Fire Insurance Co., 127 U. S., 404, it was contended that a lien created by law for unpaid taxes worked a breach of the warranty requiring a disclosure from the applicant of all facts in regard to the condition of the ownership, title incumbrances of all kind, and also to answer this question: "Is there a mortgage, deed of trust, lien, or incumbrance of any kind on the property?" This court held that this question related only to incumbrances created by the act or with the consent of the applicant, and that the omission to disclose the existing lien created by statute for unpaid taxes was no breach of the warranty.

In the above quoted case there was a question of war-

ranty involved—not forfeiture—and this court did not, in a case of that kind, see fit to read into the warranty a lien created by statute.

Speaking of these conditions which work a forfeiture, the supreme court of the State of Iowa, in the case of Lodge *vs.* The Insurance Company, 91 Iowa, 105, where the condition of the policy was "that it shall be void if incumbrance be placed thereon" and a judgment had gone against the insured, say:

"Courts are not disposed to construe these restrictions and limitations in insurance policies more liberally than is required from the language used, and thereby defeat what otherwise appeared to be honest claims for indemnity against loss. As is usual in the law of insurance, there are adjudged cases to be found on both sides of the question as to whether a judgment is a lien within the meaning of clauses somewhat similar to the one in the case at bar. That judgment is not a lien in such a case, see Bailey *v.* Insurance Co., 80 N. Y., 21 (and other cases). Our conclusion is that if it is desired to make the policy void by incumbrances which are not placed on the property by the act of the parties, *it should in terms be so provided in the contract.*"

It is therefore respectfully submitted that there is no foundation in the contention of the defendant in error which attempts to read into the condition of this policy the instrument known as a chattel deed of trust, when the condition by its words excludes such instrument, and there is no known rule of law that brings it within either the letter or wording of such a condition.

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